

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,  
HON. SONIA SOTOMAYOR,  
HON. BARRINGTON D. PARKER,  
*Circuit Judges.*

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Gezim Hysaj,

*Petitioner,*

v.

No. 05-5745-ag  
NAC

Alberto R. Gonzales, Attorney General,  
*Respondent.*

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FOR PETITIONER: James D. Christo, New York, New York.

FOR RESPONDENT: Bradley J. Schlozman, United States Attorney for the Western District of Missouri, Jerry L. Short, Assistant United States Attorney, Kansas City, Missouri.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review of the decision of the Board of Immigration Appeals

1 (“BIA”) is DENIED.

2           Gezim Hysaj, A94 381 950, a native of and citizen of Albania, petitions for review of the  
3 BIA’s September 29, 2005 order affirming Immigration Judge (“IJ”) George T. Chew’s decision  
4 denying Hysaj’s applications for asylum, withholding of removal, and relief under the Covenant  
5 Against Torture (“CAT”). We assume the parties’ familiarity with the underlying facts and  
6 procedural history of the case.

7           When the BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court  
8 reviews the decision of the IJ as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431  
9 F.3d 84, 85 (2d Cir. 2005). This Court reviews the agency’s factual findings, including adverse  
10 credibility determinations, under the substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B).

11           In this case, the IJ found Hysaj’s testimony incredible because: (1) Hysaj did not testify  
12 about the September 14, 1998 police violence mentioned in Sterkaj’s undated letter; (2)  
13 Sterkaj’s undated letter failed to mention the June 2001 arrest; (3) Sterkaj’s July 2003 letter  
14 omits Hysaj’s other arrests and problems; (4) Sterkaj’s July 2003 letter says that Hysaj was  
15 arrested June 23, 2001, while Hysaj testified it was June 25; (5) Hysaj’s Democratic Party card  
16 was dated July 2000, while Hysaj testified that he joined the party in 1991; and (6) Hysaj’s  
17 testimony was very vague and generalized. While we have concerns about the IJ’s reliance on  
18 the last three of these reasons—particularly his failure to analyze Hysaj’s explanation for the  
19 party card, and his failure to probe for details—the first three findings are supported by  
20 substantial evidence. These are “specific, cogent reasons” that “bear a legitimate nexus” to the  
21 finding. *Zhou Yun Zhang*, 386 F.3d 66, 74 (2d Cir. 2004) (internal quotations omitted). These  
22 reasons adequately support the adverse credibility finding and, considered in the context of the

1 IJ's entire analysis and the BIA's explicit reliance on only these three findings in affirming the  
2 IJ's determination, it can be confidently predicted that the agency would adhere to the decision  
3 based on these factors alone. Remand would therefore be futile here. *See Xiao Ji Chen v. U.S.*  
4 *Dep't of Justice*, 434 F.3d 144, 161 (2d Cir. 2006).

5 Hysaj contends that the IJ erred by never considering his claims in light of the current  
6 country conditions. The adverse credibility determination undermined Hysaj's entire asylum  
7 claim, however, both as to past persecution and well-founded fear of future persecution because  
8 of his membership in the Democratic Party. Because the only evidence of a threat to the  
9 petitioner's life or freedom depended upon the petitioner's credibility, the adverse credibility  
10 determination in this case necessarily also precludes success on the claim for withholding of  
11 removal. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006). Similarly, because the only  
12 evidence that petitioner was likely to be tortured depended upon the petitioner's credibility, the  
13 adverse credibility determination necessarily precludes success on the claim for CAT relief as  
14 well. *See Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005).

15 Accordingly, the IJ's decision must be upheld.

16 For the foregoing reasons, the petition for review is DENIED. The pending motion for a  
17 stay of removal in this petition is DENIED as moot.

18  
19 FOR THE COURT:  
20 Roseann B. MacKechnie, Clerk

21 By: \_\_\_\_\_  
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